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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 ANDRE PICARD,

8 Petitioner,

9 v.

10 COLVILLE TRIBAL JAIL,
11 COLVILLE TRIBAL COURT and
12 CONFEDERATED TRIBES OF THE
13 COLVILLE RESERVATION,

Respondent.

NO: 2:19-CV-00244-TOR

ORDER DISMISSING PETITION

14 BEFORE THE COURT is Petitioner Andre Pierre Picard's Petition for Writ
15 of Habeas Corpus. ECF No. 1. The Petition was submitted on July 16, 2019 and
16 Respondent the Confederated Tribes of the Colville Reservation filed a Response
17 on September 16, 2019. As of the date of the entry of this Order, Petitioner has not
18 filed a Reply. The Court – having reviewed the Petition and the Response thereto
19 – is fully informed.
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1 In short, Petitioner asserts that the Colville Tribal Court sentenced him to
2 360 days of jail time for each of three convictions. ECF No. 1 at 4. Petitioner
3 contends that the Colville Tribe does not have authority to sentence him to more
4 than one year in jail and requests habeas relief pursuant to 25 U.S.C. § 1303 of the
5 Indian Civil Rights Act (ICRA). ECF No. 1 at 5.

6 Respondents assert that Petitioner is not currently in tribal custody and that
7 Petitioner's appeal before the Tribal Court of Appeals is still pending (failure to
8 exhaust remedies). ECF No. 10 at 3. Respondents assert the Petition should be
9 denied as a result. The Court agrees.

10 Section 1303 of the ICRA provides: "The privilege of the writ of habeas
11 corpus shall be available to any person, in a court of the United States, to test the
12 legality of his detention by order of an Indian tribe." 25 U.S.C. § 1303. All
13 federal courts addressing the issue mandate that two prerequisites be satisfied
14 before they will hear a habeas petition filed under the ICRA: (1) The petitioner
15 must be in custody, and (2) the petitioner must first exhaust tribal remedies.

16 *Jeffredo v. Macarro*, 599 F.3d 913, 918 (9th Cir. 2010) (quotes, brackets and
17 citation omitted); and *see Tavares v. Whitehouse*, 851 F.3d 863, 877 (9th Cir.
18 2017) ("statutory interpretation and the legislative history support reading
19 detention more narrowly than custody, but to the extent that the statute is
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1 ambiguous, we construe the statute in favor of Indian sovereignty in accord with
2 the Indian canons of construction”).

3 Because Petitioner is not in custody and has not exhausted tribal remedies,
4 this Court lacks jurisdiction to proceed.

5 While Petitioner has not provided this Court with his current address,
6 Respondent has served him at an alternate address listed at ECF No. 10 at 6.

7 **ACCORDINGLY, IT IS HEREBY ORDERED:**

8 1. Petitioner Andre Picard’s Petition for Writ of Habeas Corpus (ECF No. 1)
9 is **DISMISSED**.

10 2. The Court further certifies that there is no basis upon which to issue a
11 certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

12 The District Court Clerk is directed to enter this Order and Judgment
13 accordingly, provide a copy to the parties (including Petitioner’s address listed at
14 ECF No. 10 at 6), and **close** the file.

15 **DATED** December 9, 2019.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

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THOMAS O. RICE
Chief United States District Judge